

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the La Fresa-Lighthip Transmission Right of Way to General Mills Operations, Inc.

Application 02-09-008
(Filed September 10, 2002)

**OPINION GRANTING APPROVAL UNDER
PUBLIC UTILITIES CODE SECTION 851 FOR
A LEASE OF UTILITY PROPERTY**

We grant the Application of Southern California Edison Company (SCE) for authority to lease available land under Public Utilities Code Section 851.¹ The SCE property consists of a 2.7-acre site located on a portion of SCE's La Fresa-Lighthipe transmission right of way (ROW) in the City of Carson (Site). The Site is part of the La Fresa-Lighthipe 220 kilovolt (kV) system. The lease is sought to permit General Mills Operations, Inc. (General Mills or Lessee) to construct and operate a vehicle parking lot on the Site.

Background

The Site is subject to an Option Agreement (Option Agreement) between SCE and General Mills dated June 13, 2002. Pursuant to the Option Agreement, General Mills has the right, subject to Commission approval, to lease the Site from SCE for the described uses for a period of 20 years beginning on the date

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

General Mills exercises the option. Annual rent will be \$81,400 in years 1 to 5 of the lease term. In the 6th, 11th and 16th years of the lease term, the rent will be increased by 10% compounded annually. The lease also grants General Mills two 10-year renewal options at fair rental value, excluding the value of General Mills's improvements.

The Option Agreement provides that General Mills's activities must not interfere with the operation of the electric facilities that cross the Site. To that end, General Mills is forbidden to use or store hazardous substances, explosives or flammable materials on the Site. Further, any equipment used by General Mills on or adjacent to the Site must maintain at all times a clearance of at least eighteen (18) feet from all overhead electrical conductors. General Mills must maintain a minimum radius of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors and provide access roads to the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

SCE retains various rights under the Option Agreement including the rights to:

- Approve General Mills's construction plans and specifications,
- Enter the Site at any and all reasonable times to inspect the property,
- Impose temporary restrictions on General Mills's right to enter, occupy and use the Site in order to perform necessary work on the electrical facilities located on the Site and
- Take back all or part of the leasehold by eminent domain or inverse condemnation.

General Mills is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to be constructed thereon,
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Site,
- Maintain appropriate comprehensive general liability, auto liability and worker's compensation insurance and
- Indemnify SCE against all liability for damages or injury to persons on the Site except to the extent caused by SCE's negligent or willful misconduct.

Determination of Best Secondary Use

The primary use of facilities located on the Site is the transmission and distribution of electricity in the City of Carson. SCE's above-ground electric lines crossing the Site, and their associated restrictions and height clearances limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the General Mills project offers the highest potential revenue. To evaluate the rental potential of the Site, SCE analyzed the rent paid for comparable parking and storage facilities in and around the Site. SCE believes that the rent it will receive falls within the acceptable market range and is in line with revenues it receives from similar Commission-approved transactions.

Developer Selection

SCE states that it entered into the Agreement with General Mills because of the optional project benefits to the community and the economic benefits to SCE ratepayers. The proposed vehicle parking lot will assist in the overall success of the new General Mills yogurt manufacturing facility that will be built on property adjacent to the Site.

General Mills is one of the world's largest manufacturers and sellers of consumer food items.

Environmental Review

Because CEQA applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the Section 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051(b)).

In this case, the City of Carson (City) is the Lead Agency. The City's environmental review process and associated documents are functionally equivalent to the traditional CEQA preparation of an Environmental Impact Report. The Commission is a Responsible Agency for this proposed project. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency environmental documents and findings before acting upon or approving the project. (CEQA Guidelines Section 15050(b).) The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

After conducting an initial study, the City adopted a mitigated negative declaration for the proposed General Mills project and issued a conditional use permit for it. SCE included the detailed record of the City's action in the Application. We adopt the City's finding that the project will have no significant effect on the environment.

Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The lease proposed here is "passive" for sharing purposes.²

² See Attachment B to SCE's Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

Discussion

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The task of the Commission in a Section 851 proceeding is to review the transaction, “[T]o ensure that it will not impair the utility’s ability to provide service to the public.” (D.96-04-045.) We have reviewed the Option Agreement and the proposed lease, and find that they do not impair SCE’s ability to provide utility service to the public. Because the proposed lease will generate revenues from the secondary use of Site and ratepayers will share in those revenues, the Application should be approved.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Karl Bemmesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for General Mills to construct its facilities on the Site, a lease from SCE is required.
2. Lease of the Site to General Mills is consistent with the current uses of the related SCE properties.
3. The lease and associated construction will not impair SCE’s ability to provide service to the public.

4. The City of Carson has conducted an environmental review that includes the Site.

5. The City of Carson has issued a mitigated negative declaration with regard to the Site.

6. It can be seen with certainty that construction and operation of the facilities contemplated by the lease as proposed in the Application will have no significant effect on the environment.

7. All revenue from the lease in excess of a Commission-established threshold will be treated as Other Operating Revenue and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.

8. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested lease is in the public interest.

2. The mitigated negative declaration adopted by the City of Carson for the Site is adequate for the CPUC's decision-making purposes as a Responsible Agency under CEQA.

3. No additional CEQA review by the Commission is required.

4. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.

5. A public hearing is not necessary.

6. The Application should be granted as set forth in the following Order.

7. This decision should be effective today in order to allow General Mills to expeditiously enter into the lease with SCE and begin paying rent for the benefit of SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's Application for authority to lease a portion of its La Fresa-Lighthipe Transmission Right of Way to General Mills, Inc. is granted, as described above.
2. All revenue from the lease shall be treated as Other Operating Revenue subject to the sharing mechanism set forth in Decision 99-09-070.
3. SCE shall notify the Director of the Commission's Energy Division in writing of any amendment, extension or termination of the lease agreement, within 30 days after such amendment, extension or termination is executed.
4. Application 02-09-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California.